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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/070,862	07/08/2002	Dietmar Wolter	H01.2-10378	2627

490 7590 03/15/2007  
VIDAS, ARRETT & STEINKRAUS, P.A.  
6109 BLUE CIRCLE DRIVE  
SUITE 2000  
MINNETONKA, MN 55343-9185

EXAMINER
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SHAFFER, RICHARD R

ART UNIT	PAPER NUMBER
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3733

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/15/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

10/070,862

Applicant(s)

WOLTER ET AL.

Examiner

Richard R. Shaffer

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 December 2006.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) 6,7 and 16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5,8-15 and 17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Priority***

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

### ***Drawings***

The drawings are objected to because they fail to clearly portray the invention. Poor quality of reproduction, hand written characters (reference characters, figure numbers, page numbers) and too thick of lines make it difficult to understand the invention from the drawings. Especially portions dealing with the screw structure in being fixed into the plate. From Figure 5, one would only see the screws capable of being inserted in one fixed direction and locking themselves to the plate. From the other figures, it's not even clear how the screws would even fix in the apertures, especially those of Figures 2-4.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering

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of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Specification***

The disclosure is objected to because of the following informalities:

Applicant repeatedly uses the term "fixateur." Such as found on page 2 and in the claims. Applicant has not submitted a properly translated document due to several occurrences of German language lingering.

Applicant also several times recites to the claims in the written specification to describe the invention. This is improper; the specification must be able to stand-alone without referencing the claims. (See page 4 for examples of improper use).

Applicant must carefully examine the specification and correct the plurality of oversights previously made in submitting the National Stage of the PCT to correct for errors in translation or differences in patent practice such as avoiding referencing the claims.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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Claims 1-5, 8-15 and 17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims are unclear for a plurality of reasons. Examples include:

Claim 4: applicant consistently mentions "holes" without reciting back to the holes already recites creating antecedent issues. Applicant also recites "adapted to be fixed in the holes" twice. Applicant is also encourage to word the section describing the various forms the reinforcement member can take, such as language stating "the reinforcement of the force carrier being any one or combination of the following group consisting of ...." This is standard Markush claim language and better defines what applicant already has, but without needless jargon.

Claims 2 and 3: applicant attempts to further limit claim 4, however these limitations merely result in restating the exact same thing applicant has already claimed adding confusion as to what really was claimed in the first place. These claims should be cancelled or clearly limiting claim 4 by choosing a specific one or combination to which the reinforcement member is limited. Applicant is reminded that a sub-selection directed towards a non-elected species would be initially withdrawn pending an allowable claim generic to the species.

Claim 5 states "the enlargement in cross-section" in line 1, there is insufficient antecedent basis for this limitation.

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Claims 15 and 17 suffer from the same issue as claim 4 with the use of "holes." Again, applicant must be careful to first recite a plurality of a holes, of which two are adjacent, etc.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 4, 5, 14 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Pawluk (US Patent 4,955,886).

Pawluk discloses a bone plate (**40, Figures 3 and 4**) having holes (**48, 50**) for bone screws to be inserted; there are two adjacent holes (right most **50** and left most **48**) to be located on opposite sides of a fracture zone; and since as easily shown in **Figures 3 and 4**, the cross-sectional area is reduced as one moves away from the fracture zone therefore meaning the closer holes are "reinforced" relative to the further holes.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 8-13 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pawluk in view of Wagner et al (US Patent 6,454,769).

Pawluk discloses all of the claimed limitations except for obliquely orientated holes with at least two inclined towards each other and screws conically tapered and threaded in the head portion in order to be inserted at a plurality of angular orientations.

It is well known in the art to orientate screws on opposite sides of a fracture site towards one another in order to increase compression and the likelihood of proper bone repair. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to angle at least a hole on each side of the fracture zone towards each other to improve bone repair.

Wagner et al further teach that obliquely orientated screws are desired to reduce back out (**Column 2, Lines 58-60**). Wagner et al further teach the use of a conically threaded head screw with a ring in order to fix the screw at a plurality of angles relative to the plate without the need to having a specially designed hole therefore further providing to a surgeon greater flexibility in screw placement. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the plate of Pawluk with rings and screws with conically threaded heads to provide for a simple way of fixing screws at oblique angles which further prevents screw back out.

### ***Response to Arguments***

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richard R. Shaffer whose telephone number is 571-272-8683. The examiner can normally be reached on Monday-Friday (7am-5pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Richard Shaffer  
March 9<sup>th</sup>, 2007



EDUARDO C. ROBERT  
SUPERVISORY PATENT EXAMINER